

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEBRA I. SHAPIRO
Claimant

VS.

U.S.D. 229
Self-Insured Respondent

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Docket No. 1,063,336

ORDER

STATEMENT OF THE CASE

Self-insured respondent requested review of the April 3, 2014, Order entered by Administrative Law Judge (ALJ) Steven J. Howard. Mark E. Kolich of Lenexa, Kansas, appeared for claimant. Christopher J. McCurdy of Overland Park, Kansas, appeared for respondent. This case has been placed on the summary docket for disposition without oral argument.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the March 25, 2014, Motion Hearing and the exhibits; the transcript of the December 3, 2013, Regular Hearing; the transcript of the January 15, 2014, continuation of Regular Hearing by deposition of claimant; the transcript of the March 7, 2014, evidentiary deposition of Dr. Daniel J. Stechschulte and the exhibits; and the January 23, 2014, evidentiary deposition of Dr. John Vani and the exhibits, together with the pleadings contained in the administrative file.

The ALJ denied respondent's motion for an extension of respondent's terminal date. Additionally, the ALJ found he would not exclude the deposition of Dr. Daniel J. Stechschulte in his determination. The ALJ noted all terminal dates had run, and accordingly, the claim was deemed submitted.

ISSUES

Respondent argues the ALJ erred in denying the extension of its terminal date. Respondent maintains it was denied its statutory right to fully present its defenses, and further, an extension of terminal dates would not have been necessary had claimant provided an accurate history to the neutral court-ordered physician.

Claimant contends the Board lacks jurisdiction to review this appeal, as the ALJ's Order is interlocutory in nature.

The issues for the Board's review are:

1. Does the Board have jurisdiction to review respondent's appeal?
2. If so, did the ALJ commit reversible error by denying respondent's motion for extension of terminal date?

FINDINGS OF FACT

At the regular hearing, both claimant's and respondent's terminal dates were set for February 4, 2014. Following the January 23, 2014, testimony of Dr. Vani, the court-ordered independent medical examiner, respondent decided to take the deposition of Dr. Stechschulte. Respondent filed a motion to extend its terminal date on February 3, 2014.

Dr. Stechschulte's deposition was taken March 7, 2014. Claimant requested the exclusion of Dr. Stechschulte's deposition as evidence because it was taken prior to a hearing regarding respondent's extension request.

The motion hearing was held on March 25, 2014. Respondent explained while the regular hearing was held December 3, 2013, claimant did not testify until her deposition on January 15, 2014. Claimant identified her primary care physician during the deposition. Respondent obtained the primary care physicians records and discovered claimant had knee complaints prior to her January 2012 injury. Respondent requested additional time to investigate this issue and place claimant's previous medical records into evidence.

The ALJ found respondent had sufficient time to discover this information, as the claim was filed in November 2012, over a year prior to the regular hearing:

This evidence was clearly discoverable anytime prior to the first full hearing, and no good cause has been shown to determine that this information was not available had claimant's discovery deposition [been] taken in an appropriate manner.¹

PRINCIPLES OF LAW

K.S.A. 2011 Supp. 44-523(b) states:

Whenever a party files an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, the matter shall be assigned to an administrative law judge

¹ ALJ Order (Apr. 3, 2014) at 2.

for hearing and the administrative law judge shall set a terminal date to require the claimant to submit all evidence in support of the claimant's claim no later than 30 days after the first full hearing before the administrative law judge and to require the respondent to submit all evidence in support of the respondent's position no later than 30 days thereafter. An extension of the foregoing time limits shall be granted if all parties agree. An extension of the foregoing time limits may also be granted:

(1) If the employee is being paid temporary or permanent total disability compensation;

(2) for medical examination of the claimant if the party requesting the extension explains in writing to the administrative law judge facts showing that the party made a diligent effort but was unable to have a medical examination conducted prior to the submission of the case by the claimant but then only if the examination appointment was set and notice of the appointment sent prior to submission by the claimant; or

(3) on application for good cause shown.

ANALYSIS

The Kansas Workers Compensation Board has jurisdiction to review decisions of ALJs only to the extent provided in the Act. The Board has jurisdiction to review preliminary hearing orders as to disputed issues of compensability as specifically set forth in K.S.A. 44-534a(a). The Board also has jurisdiction to review preliminary hearing orders under K.S.A. 44-551 if it is alleged that the judge exceeded his or her jurisdiction in granting or denying the relief requested at the preliminary hearing. Pursuant to K.S.A. 44-551, the Board is provided with jurisdiction to review final orders, awards, or modifications of awards entered by an ALJ.

Respondent alleges the ALJ committed reversible error by failing to extend respondent's terminal date and, presumably, exceeded his jurisdiction. The ALJ is only obligated to extend terminal dates under K.S.A. 2011 Supp. 44-523(b) if all parties agree. In this case, claimant objected to an extension of terminal dates. If the parties cannot agree on an extension of terminal dates, the statute gives the ALJ discretion to grant or deny the motion. The ALJ did not exceed his jurisdiction by not extending respondent's terminal date.

Even if the ALJ had exceeded his jurisdiction or committed reversible error, the Board does not have jurisdiction. In two cases involving the same issue and ALJ, the Board specifically held that:

The ALJ's decision to extend terminal dates is interlocutory in nature and made during the litigation of a workers compensation case that is before the ALJ. This is

neither a final order that can be reviewed pursuant to K.S.A. 44-551 nor an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a,²

The Workers Compensation Act does not provide for Board review of interlocutory orders of an ALJ. The Board does not have jurisdiction to review interlocutory appeals.³

CONCLUSION

The Board does not have jurisdiction to review respondent's appeal.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that respondent's appeal is dismissed for lack of jurisdiction. The Order of Administrative Law Judge Steven J. Howard dated April 3, 2014, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of May 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

² *Kirby v. U.S.D.* 233, No. 1,029,984, 2007 WL 2937776 (Kan. WCAB Sept. 28, 2007); *see also Smith v. U.S.D.* 233, No. 1,029,822, 2008 WL 5122313 (Kan. WCAB Nov. 19, 2008).

³ *Walker v. State of Kansas*, No. 1,048,030, 2013 WL 485696 (Kan. WCAB Jan. 25, 2013); *Stupasky v. Hallmark Marketing Corp.*, No. 1,031,988, 2012 WL 1142954 (Kan. WCAB Mar. 14, 2012); *Pham v. Dold Foods, Inc.*, Nos. 1,013,951 & 1,013,952, 2011 WL 6122903 (Kan. WCAB Nov. 22, 2011).

c: Mark E. Kolich, Attorney for Claimant
mek@kolichlaw.com

Christopher J. McCurdy, Attorney for Self-Insured Respondent
cmccurdy@wallacesaunders.com

Steven J. Howard, Administrative Law Judge